

REMARKS

The majority of the amendments to the claims here are identical to the allowed claims as amended in the response to the May 16, 2007 Final Office Action, filed November 16, 2007, except that deleted matter is shown with one set of brackets, not two sets of brackets. The only new amendment is that the word “phyto-oestrogen” has been amended to conform to a common spelling. Thus, these amendments conform to the specific requirements for reissue amendments and do not change the scope of the allowed claims. Nevertheless, in the interest of completeness, Applicant sets out support for the amended claims below.

Claim 1 has been amended to delete the recitation “elevated blood cholesterol.” Claims 3-8 and 13 have been amended to introduce and/or pluralize the term “phyto-oestrogen” to be more consistent with claim 1, which recites “any two or more phyto-oestrogens.” Claim 11 has been amended to recite the phyto-oestrogen components of original claim 5. Claim 13 has also been amended to remove the period after “mg”. The removal of the period after “mg” follows modern grammatical convention. Claim 9 has been cancelled. Claims 1, 3-8, 11 and 13 have been amended to recite “phyto-oestrogen” rather than “phyto-estrogen” or “phytoestrogen” to conform to a common spelling and to the claims of the original patent. Support for this amendment may be found, at least, in the specification of U.S. Patent No. 5,830,887, col. 6, line 3.

New claims 14 to 19 have been introduced. New dependent claims 14 and 15 have been added to provide specific formulations of claim 11 to parallel the specific formulations of claim 1 set forth in original claims 3 and 4. Applicant has also added new independent method claim 16 to encompass the three original indications in independent claim 1, but limited to the use of the phyto-oestrogens of original claim 5. New dependent claims 17 to 19 recite more specific

aspects of the method of claim 16 to parallel the specific aspects of claim 1 set forth in original claims 6, 7 and 8. Thus, the amendments to the claims and the newly introduced claims are supported by at least the original claims and, accordingly, introduce no new matter.

With the entry of this amendments, claims 1-8 and 10-19 are identical in scope to the allowed claims but are set forth in proper format and share the same spelling of the word “phyto-oestrogen.”

Interview Summary

Applicant thanks the Reissue Specialist Jean Vollano for conducting a telephonic interview with Applicant’s representative on April 8, 2008. During that interview, Reissue Specialist Vollano confirmed the objections to the application, and provided suggestions on overcoming those objections. Specifically, Reissue Specialist Vollano stated that (a) the first page of U.S. Pat. No. 5,830,887, including the abstract, was sufficient to overcome the objection under 37 CFR 1.72(b); (b) a statement under 3.73(b) was required; and (c) the claims were improperly amended due to double brackets, rather than single brackets, being used to denote deleted matter. Reissue Specialist Vollano also confirmed that a new oath or declaration was not required for these amendments. However, to avoid any possible delay should the Office believe an oath or declaration is required for the amendments that conform the spelling of “phyto-oestrogen,” Applicant now provides a Supplemental Declaration pursuant to M.P.E.P. § 1444 and 37 C.F.R. §§ 1.172 and 1.175.

Objection under 37 CFR 1.72(b) - An abstract on a separate sheet is required

The Examiner has objected to the application on the grounds that an abstract of the disclosure on a separate sheet is required by 37 CFR 1.72(b). Action at page 2. Specifically, the Examiner states that “the abstract should be provided that is the first page of the patent.” *Id.*

Applicant has provided the abstract on the first page of U.S. Pat. No. 5,830,887 (“the ‘887 patent”), as requested by the Examiner. *See* Attachment 1. To avoid any issue with processing the first page, Applicant also provides the abstract on a separate sheet. *See* Attachment 2. Providing a copy of the abstract on a separate page should overcome the Examiner’s objection.

Objection under 37 CFR 1.172(a) - Ownership interest with Form 3.73(b)

The Examiner has objected to the application on the grounds that the Assignee has not established its ownership interest in the patent under 37 CFR 1.172(a). Action at page 2. The Examiner states that “[a]ll assignees consenting to the reissue must establish their ownership interest in the patent by filing in the reissue application a submission in accordance with the provisions of § 3.73(b).” *Id.*

Applicant now provides an executed “Statement under 37 CFR 3.73(b)” showing a chain of title from the inventor of the ‘887 patent to the current Assignee. The 3.73(b) statement establishes ownership interest by specifying in the record of the reissue application where such evidence is recorded in the Office (e.g., reel and frame number, etc.). The submission is signed by Ronald Erratt, Secretary of Novogen Research Pty, Ltd., a party authorized to act on behalf of the Assignee. *See* M.P.E.P. § 1410.01. Providing the executed 3.73(b) statement should overcome the Examiner’s objection.

Objection under 37 CFR 1.173 - Improper Claim Amendment

The Examiner has objected to the application on the grounds that the claims have been amended improperly under 37 CFR 1.173. Action at page 3. Specifically, the Examiner states that “[t]he matter to be omitted by reissue must be enclosed in brackets....” *Id.*

Applicant has provided an amended claim set that complies with Section 1.173. This amended claim set should overcome the Examiner's objection.

CONCLUSION

Applicant believes this paper addresses all outstanding objections and puts the application in condition for allowance. Applicant therefore respectfully requests the consideration and timely issuance of a Notice of Allowance. Please do not hesitate to call the undersigned at (650) 849-6611 if you have any questions.

Please grant any further extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,
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Jean Burke Jordis
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Dated: July 3, 2008

By: *Reg No. 32,984*
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Attachment 1

United States Patent [19]

Kelly

[11] Patent Number: 5,830,887

[45] Date of Patent: Nov. 3, 1998

[54] **HEALTH SUPPLEMENTS CONTAINING PHYTO-OESTROGENS, ANALOGUES OR METABOLITES THEREOF**

[75] Inventor: **Graham Edmund Kelly**, Northbridge, Australia

[73] Assignee: **Novogen Research Pty. Ltd.**, New South Wales, Australia

[21] Appl. No.: **338,567**

[22] PCT Filed: **May 19, 1993**

[86] PCT No.: **PCT/AU93/00230**

§ 371 Date: **Jan. 12, 1995**

§ 102(e) Date: **Jan. 12, 1995**

[87] PCT Pub. No.: **WO93/23069**

PCT Pub. Date: **Nov. 25, 1993**

[30] **Foreign Application Priority Data**

May 19, 1992 [AU] Australia PL2511

[51] Int. Cl.⁶ **A01N 43/04**; A11K 31/70; C07D 311/04; C07D 311/74

[52] U.S. Cl. **514/182**; 514/25; 424/195.1; 424/464; 424/423; 424/449; 424/451; 426/545; 549/403; 549/406

[58] Field of Search 252/404; 426/545; 549/403, 406; 424/464, 423, 449, 451, 195.1; 514/182

[56] **References Cited**

U.S. PATENT DOCUMENTS

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FOREIGN PATENT DOCUMENTS

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OTHER PUBLICATIONS

Y. Liu et al., Chemical Abstracts, 115 (8): Abstract No. 78763p, p. 466 (1991).

Chem Abstract vol. 115, No. 8, issued 26 Aug. 1991, Liu, Y. et al., "Effects of solid dispersion of didzein on the blood pressure of spontaneously Hypertensive Rats", p. 406.

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[57] **ABSTRACT**

Compositions enriched with natural phyto-oestrogens or analogues thereof selected from Genistein, Daidzein, Formononetin and Biochanin A. These may be used as food additives, tablets or capsules for promoting health in cases of cancer, pre-menstrual syndrome, menopause or hypercholesterolaemia.

13 Claims, No Drawings

Attachment 2

ABSTRACT

Compositions enriched with natural phyto-oestrogens or analogues thereof selected from Genistein, Daidzein, Formononetin and Biochanin A. These may be used as food additives, tablets or capsules for promoting health in cases of cancer, pre-menstrual syndrome, menopause hypercholesterolaemia.